

Via EFS

Date of Deposit: November 10, 2008

Attorney Docket No.: 34251-502 NATL

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS : Cohen *et al.*
SERIAL NUMBER : 10/509,770 EXAMINER : Celia C. Chang
FILING DATE : September 28, 2004 ART UNIT : 1625
PATENT NUMBER : 7,423,050 B2 ISSUE DATE : September 9, 2008
FOR : PYRIDINOYLPIPERIDINES AS 5-HT1F AGONISTS

REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT

Applicants submit herewith this Request for Reconsideration of Patent Term Adjustment under 37 CFR 1.705(d) in the above-referenced issued patent accompanied by the two-hundred dollar fee as required by § 1.18(e). The above-referenced patent issued on September 9, 2008. Accordingly, a request must be filed by Monday, November 10, 2008 (with November 9, 2008 being a Sunday). Applicants believe no additional fees are due with the filing of this Request. However, if any fees are required, Applicants hereby authorize the Commissioner to charge such fee, or credit any overpayment in fees, to Deposit Account No. **50-0311**; Customer Number **30623**; Reference Number: **34251-502NATL**.

Applicants submit that the 465 days of Patent Term Adjustment noted on the face of the issued patent should be increased to 656 days, provided that a four month reduction applies regarding the Petition discussed below. This Request is submitted in view of the decision by the U.S. District Court decision in Wyeth v. Dudas (D.D.C. 2008) on September 30, 2008, and because Applicants submitted a paper after the Notice of Allowance had been mailed. Applicants request reconsideration of the patent term adjustment based on the following statement of facts:

More than 3-Year Pendency

Applicants request an additional 346 days based on the fact that the above-referenced patent was pending for more than three years. The effective filing date of the instant utility application was September 29, 2004 and the application issued on September 9, 2008. The 3-year period ended on September 29, 2007. Thus, Applicants request that the term of the patent is extended for an additional 346 days for the time period that the application was pending from September 30, 2007 through September 9, 2008.

Paper Submitted After Notice of Allowance

Applicants filed a Petition to Correct Inventorship under 37 CFR § 1.48(b) in the above-referenced application on August 6, 2008 after the mailing of the Notice of Allowance on May 23, 2008. Applicants submit that if the Petition qualifies as an “other paper” under 37 CFR § 1.704(c)(10), then the period of adjustment should be reduced by the lesser of: the number of days, beginning on August 6, 2008 and ending on the mailing date of the notice in response to the Petition, or four months. To date, Applicants have not received a response from the USPTO regarding the Petition. If a response is not received by December 6, 2008, the reduction is four months (120 days). If a response to the Petition is received before December 6, 2008, Applicant should be entitled to a lesser reduction.

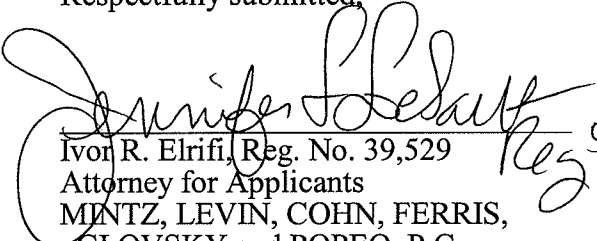
Error in Initial PTA Calculation

In compliance with Applicants’ duty of candor and good faith, Applicants note that a reduction in PTA was not taken regarding the Information Disclosure Statement, filed on May 9, 2008. Applicants filed this IDS less than 30 days from the date Applicants were made aware of the cited art. However, if this IDS qualifies under 37 CFR § 1.704(c)(8) as an the submission of an other paper, after the reply filed on February 20, 2008, then, the period of adjustment reported on the Notice of Allowance should have been reduced by an additional 35 days, based on the period beginning February 21, 2008 and ending on May 9, 2008 (79 days) and subtracting the 44 day reduction already applied for the IDS, filed on April 4, 2008.

Applicants: Cohen et al.
U.S. Application No. 10/509,770

The above-referenced patent is not subject to a terminal disclaimer. In accordance of the facts stated above, Applicants respectfully request review of the determination of patent term adjustment under 35 U.S.C. § 154(b).

Respectfully submitted,

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